

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.35 OF 2001

STATE

...APPELLANT

versus

Venkatesh Bhimanna,
s/o Bhimanna,
R/o H.No.170, 3rd Main Rd
7th Cross Kamrojpoth,
Bangalore 18

...RESPONDENT.

Ms Winnie Coutinho, Addl. Public Prosecutor, for
the Appellant State.

Mr. J. Godinho, Advocate for the Respondent.

CORAM : D.G. DESHPANDE, J.

Date of reserving
the Judgment: **January 31, 2003.**

Date of pronouncing
the Judgment: **February 20, 2003.**

J U D G M E N T

Heard Ms. Coutinho, Addl. Public
Prosecutor for the State and Mr. J. Godinho for
the accused.

2. This is an Appeal by the State against
the Judgment of acquittal of the accused from
offences under Sections 279 and 304-A of the Indian
Penal Code in Criminal Case No.211/98/C being

passed by the Judicial Magistrate, First Class, Panaji.

3. The case of the prosecution was that on 9-10-1998 at 14.50 hours, the accused was driving his bus No.KA-01-9586 from Panaji to Ponda. He was driving the bus rashly and negligently and he dashed against a Maruti car No.GA-01-E-8090 which was coming from the opposite direction. The dash resulted in the death of the driver of the Maruti car, namely, Vasant Moropanth Gramopadhya, aged 50 years, of Ponda, Goa. The defence of the accused was that he was not responsible for the accident, but it was the driver of the Maruti car, who in an attempt to overtake a scooterist, came to the wrong direction and hit the bus.

4. Several witnesses were examined before the trial Court, one of them was an eye witness P.W.4 by name Sameer Goswami. The others were: P.W.1 the panch for the spot panchanama by name Sushant Venkat Naik, P.W.2 Nilesh Amonkar the panch for the inquest panchanama, P.W.3 Dr. Rodrigues who conducted autopsy of the dead body, P.W.5 Ramesh Shirodkar, the Motor Vehicles Inspector and two Police Officers P.W.6 and P.W.7.

5. The trial Court disbelieved the eye witness P.W.4 on the ground that P.W.4 did not volunteer to record his statement but the Investigating Officer located him and planted him as eye witness.

6. It was this part of the Judgment which was strongly criticised by the Addl. Public Prosecutor and she contended that by no stretch of imagination it could be said that the eye witness P.W.4 was planted by the Investigating Officer. She further contended that the account of the incident given by the eye witness fully corroborated by the circumstances and mainly the panchanama and the sketch map and, therefore, the Judgment of acquittal being perverse is required to be set aside. On the other hand, the Advocate for the accused contended that a perusal of the sketch map and the panchanama and the evidence given by P.W.4 would show that it was the deceased driver of the motor vehicle who was at fault and, therefore, he contended that no interference was required in the Order of acquittal.

7. Since the evidence of P.W.4 is important, it is necessary to consider it at the outset. P.W.4 has stated that on 9-10-1998, at the

time he was going by the road on his scooter and when he reached near Muslim Dharga at 2.30 p.m., the Maruti car overtook his scooter and proceeded ahead. The Maruti car was proceeding towards Panaji at a speed of 50 Kilometres per hour because the speed of his scooter was 40.45 Kms. per hour and at that time the Karnataka bus driven by the accused, came from Panaji side and it was at a fast speed. The deceased driver of the Maruti car tried to take his car to the side of the road to avoid a mishap, but the Karnataka bus was at a very fast speed and as a result, it went on the wrong side and dashed the Maruti car. The Maruti car went in reverse due to the dash and turned turtle on the left if one proceeds from Ponda to Panaji.

8. The witness further stated that the accused (there is no dispute about the identification of the accused or the fact that the accused was driving the bus at the relevant time), after the dash to the Maruti car, took it to the correct side of the road and parked it there. The witness has in the cross-examination stated that some persons known to him were present at the time of the accident. Therefore, police contacted him and he gave his statement to police after two days. He has stated that he was following the Maruti car

after the same overtook him. There is absolutely no cross-examination of this witness. Certain suggestions are given to him all of which are denied by him.

9. However, the evidence of this witness was rejected by the trial Court because P.W.6 Anandu Naik, retired P.S.I., who has investigated this case, stated in his cross-examination at para 4 as "I secured the witness Sameer as I came to know from the members of public that Sameer had witnessed the incident." It is this word "secured" that the trial Court has interpreted as "planting the witness". This interpretation put forth by the trial Court is totally wrong and perverse. "Securing" does not mean in the circumstances of the case, as "planting of the witness". Admittedly, the witness was not there when the police arrived and the name of the witness came to be known by P.W.6 only after he made enquiries and, therefore, in that background he has stated that he secured the witness i.e. he contacted the witness for the statement of the witness. There is no suggestion given to P.W.4 initially in the cross-examination that he was made to testify against the accused at the instance of the police. Further, there is nothing in the cross-examination

to show that the witness had any **animus** or grudge to bear against the accused or any ulterior motive to falsely implicate the accused. In the absence of any such suggestions or circumstances, the finding of the Court that the witness P.W.4 was planted by the Investigating Officer is without any factual basis. Therefore, the contention of the Counsel for the accused that P.W.4 is a planted witness is to be rejected so also the finding of the trial Court in that regard.

10. Coming to the actual incident, it was contended by the Counsel for the accused that from the sketch map which forms part of the paper-book, it is clear that there is a curve near the place of the incident and according to him, the Karnataka bus which was coming from Panaji and going to Khorlim was on the right side of the road and it was the Maruti car that had come to the left side while proceeding from Khorlim to Panaji. This does not appear to be the correct position. In the sketch map, the point of dash is shown near the left edge of the road if one proceeds from Khorlim to Panaji. The Maruti car had gone into reverse from that point of dash and it had crossed 2 metres wide kachcha road and had gone into the deeper and the lower portion by the side of the Kachcha road.

The point of dash will, therefore, show that the Karnataka bus had crossed more than 3/4th portion of the main road which is 6.95 metres wide and hit the Maruti car. It is clear, therefore, that while turning on the corner, the Karnataka bus went to the left and did not see the Maruti car at all and dashed against the Maruti car resulting into the accident and the death of the driver.

11. If the Kadamba bus was driven by the right side of the road, the place of the accident would have been somewhere in the centre or to the right side but the place of the accident which was fixed by the Investigating Officer on the basis of the broken glass pieces at the spot clearly shows that the Maruti car was to the left and the Karnataka bus was also on the left which was the wrong side for the Karnataka bus driven by the accused. Further the sketch map shows that the Karnataka bus was made to stop near the left side of the road and this fully supports and corroborates the evidence of P.W.4 when he says that after the dash, the Karnataka bus driver, i.e. the accused, took the bus on the correct side of the road and parked it there.

12. It was also urged by the Advocate for

the accused that if the Maruti car had overtaken the scooter, then it should be on the right side of the road if one proceeds from Khorlim to Panaji. This argument is without basis because the point of dash is to the extreme left if one proceeds from Khorlim to Panaji near the left edge of the road. It is clear that the Maruti car had after overtaking the scooter of P.W.4, come to a right point, to a proper place. Further, the fact that the Maruti car was dashed backwards and made to go in reverse because of the impact, also supports that the accused was negligent and rash in driving his bus. The panchanama shows that the bus stopped at a distance of 15.50 metres i.e. 50 feet away from the point of dash and the brake marks were seen on the road fully supports and corroborates the testimony of P.W.4 as admittedly there is no mechanical failure for the bus which was inspected by the witness.

13. Since the Judgment of acquittal is only based on the rejection of evidence of P.W.4 by the trial Court and since we find that the trial Court was completely wrong in such rejection, the Judgment has to be set aside.

14. Even the damage caused by the bus to

the Maruti car and the panchanama in that regard fully supports the case of a powerful head-on collision between the bus and the Maruti car. P.W.5 has stated that the vehicle i.e. the Maruti car could not be driven as its steering was stuck to the door. The driver side full body including both doors, top, front mudguard, front window screen, driver side central pillar and steering wheel all were damaged. So far as the bus is concerned, damage was caused to the driver side front corner including the head light, side light and the bumper.

15. The Counsel for the accused contended that the Investigating Officer has fixed the spot of the accident incorrectly. It is difficult to accept this submission. When the spot panchanama was prepared, the Investigating Officer was assisted by two panchas, all the measurements were taken and the spot where the broken pieces of glass were found was correctly fixed as the spot of the dash. The brake marks were also noted from that point till the place where the bus was made to stop. For all these reasons, the Judgment of the trial Court of acquittal of the accused is found to be perverse and is liable to be set aside. It is proved by the prosecution through all the evidence

tendered before the trial Court that the accused committed the offence under Sections 279 and 304-A of the Indian Penal Code.

16. The Appeal is, therefore, required to be allowed. The question is of sentence and in that regard it was contended by the Advocate for the accused that looking to the fact that the incident has happened in 1998, four years have passed, minimum sentence should be awarded to the accused. On the other hand, the learned Addl. Public Prosecutor contended that because of the rash and negligent driving, a man has lost his life and, therefore, deterrent sentence should be awarded. The punishment prescribed under Section 279 I.P.C. is six months imprisonment or with fine or with both and the punishment prescribed for offence under Section 304-A is two years imprisonment or with fine or with both. Considering, therefore, the submissions made by both the Advocates, I pass the following Order:-

The Appeal is allowed. The Judgment of acquittal of the accused is set aside. The accused is convicted under Section 279 I.P.C. and sentenced to suffer Rigorous Imprisonment for six months and to pay a fine of Rs.1,000/-, in default,

to suffer rigorous imprisonment for another month. He is also convicted under Section 304-A I.P.C. and is sentenced to suffer Rigorous Imprisonment for nine months and to pay a fine of Rs.1,000/-, in default, to suffer rigorous imprisonment for another month. Both the sentences to run concurrently. The accused to surrender before the trial Court within four weeks.

D.G. DESHPANDE, J.

ac.